

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

GREGORY A. FIGEL (#179188),

Plaintiff,

Case No. 2:03-CV-206

v.

HON. DAVID W. McKEAGUE

JOE SUARDINI, et al.,

Defendants.

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**ORDER DENYING APPEAL OF MAGISTRATE JUDGE'S ORDER**

The magistrate judge issued an order on March 30, 2005 (Docket # 182) granting, in part, plaintiff's motion to compel discovery. The magistrate judge ordered defendants to respond fully to plaintiff's interrogatories one, two and three, relating to disciplinary action and criminal charges against defendants. Defendants have appealed the magistrate judge's order on the grounds that such information is not relevant to this case.

A magistrate judge's resolution of a non-dispositive pretrial matter should be modified or set aside on appeal only if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been committed. *United States v. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542 (1948).

Defendants first argue that they have not been convicted or completed confinement within the last ten years and therefore, any information obtained from answers to interrogatory one is not relevant. Defendants also argue that, with respect to interrogatories two and three, plaintiff's requests are overly broad and "calls for information that could be decades old."

There is no time limit for admission of evidence under Fed. R. Evid. 404(b). Similarly, Fed. R. Evid. 609 provides that a witness' credibility may be attacked by evidence of a prior conviction, even if the conviction is more than ten years old, if the Court determines "that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." The magistrate judge found that evidence of defendants' prior convictions (if any), violations of MDOC policy and procedures (if any) and violations of MDOC work rules (if any), could be relevant under Fed. R. Evid. 404(b) and Fed. R. Evid. 609. The magistrate judge's findings were neither clearly erroneous or contrary to law. Accordingly, the Court finds defendants' objections to be without merit. Now therefore,

**IT IS HEREBY ORDERED** that defendants' appeal of magistrate judge's order granting, in part, plaintiff's motion to compel discovery is **DENIED**. Defendants shall answer plaintiff's interrogatories as directed by the magistrate judge in the March 30, 2005 order (Docket # 182).

**IT IS FURTHER ORDERED** that defendants' request for a protective order allowing defendants to file their amended responses to plaintiff's interrogatories one, two and three under seal is **DENIED**. Defendants have not shown good cause to grant the relief requested.

Dated: April 22, 2005

/s/ David W. McKeague  
DAVID W. McKEAGUE  
UNITED STATES DISTRICT JUDGE